

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

T.C. ANDERSON

Petitioner,

VS.

DOUGLAS DRETKE, Director
Texas Department of Criminal Justice,
Correctional Institutions Division

Respondent.

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NO. 3-05-CV-1489-P

**FINDINGS AND RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE**

Petitioner T.C. Anderson, appearing *pro se*, has filed a motion to withdraw his application for writ of habeas corpus. As grounds for his motion, petitioner acknowledges that he has a state writ pending before the Texas Court of Criminal Appeals and must exhaust his state remedies before seeking federal habeas relief.

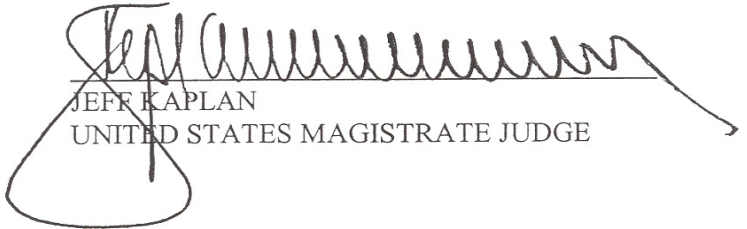
Fed. R. Civ. P. 41(a)(1) provides that “an action may be dismissed by the plaintiff without order of court [] by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs . . .” FED. R. CIV. P. 41(a)(1). Respondent has not yet served an answer or a motion for summary judgment. Consequently, petitioner is entitled to a dismissal without prejudice.

RECOMMENDATION

Petitioner’s motion to dismiss should be granted. This case should be dismissed without prejudice pursuant to Fed. R. Civ. P. 41(a)(1).

A copy of this report and recommendation shall be served on all parties in the manner provided by law. Any party may file written objections to the recommendation within 10 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). The failure to file written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).

DATED: August 17, 2005.



JEFF KAPLAN
UNITED STATES MAGISTRATE JUDGE